CASE SUMMARY

Complaint about Illegal Parking of Bicycles at a Public Transport Interchange

The Complaint

Since December 2007, the owners' committee of a private housing estate had repeatedly complained to the Transport Department ("TD") and the local District Office ("DO") about illegal parking of bicycles at the public transport interchange ("PTI") on the ground level of the estate. However, the problem persisted. The committee was dissatisfied that the departments concerned had not taken proper action to solve the problem.

Background

Title of the PTI

2. Government had, through land grant conditions, required the developer of the estate to build the PTI. Upon completion of the estate, the title of the PTI was transferred to Government.

The Accommodation Regulations

3. The Accommodation Regulations provide for the management and utilisation of all Government properties (including those within private developments). All departments concerned are to comply.

4. Section 341 of the Regulations stipulates that when a Government property is completed, it should be jointly inspected by the Architectural Services Department, the Government Property Agency ("GPA") and the "User Department". Once compliance with building specifications is confirmed, the "User Department" will take over the property.

5. Under section 344 of the Regulations, the "User Department" shall

manage the property and monitor its operation and utilisation.

Building Hand Over Certificate

6. In May 1995, TD signed the Building Hand Over Certificate ("Certificate") and took over the PTI as the "User Department".

The Event

7. In February 2007, at a meeting of the Working Group on Tackling Illegal Bicycle Parking ("Working Group") under the District Management Committee, DO asked TD to provide additional bicycle parking spaces at the PTI as a long-term solution to the problem of illegal parking. TD argued that under the Maintenance Schedule in force, duties were to be shared among various departments, so the problem of illegal parking of bicycles should be jointly handled by all the departments concerned.

8. In December 2007, the management company of the estate wrote to DO and requested removal of the illegally parked bicycles. DO referred the letter to TD for follow-up action.

9. By January 2008, there was still no consensus as to which department should be responsible for dealing with the problem of illegal parking of bicycles. DO resorted to suggesting at a Working Group meeting that inter-departmental clearance operations be carried out on an *ad hoc* basis.

10. In May that year, the management company wrote to TD and asked the Department to solve the problem of illegal parking of bicycles. The Department replied in June that the issue was under the jurisdiction of the Working Group, and that the Department would refer the complaint to DO for follow-up action.

11. Then in August 2008, the management company wrote to DO and TD again, urging them to solve the problem. DO asked TD to clarify with the management company its management responsibility as the "User

Department" of the PTI. In the event, TD replied to the management company that the case had been referred to the Food and Environmental Hygiene Department ("FEHD") and the Police.

12. During April and May 2009, DO coordinated six inter-departmental operations to temporarily remove bicycles illegally parked at the PTI. Participating departments included TD, FEHD and the Police.

Our Comments

Management Responsibility

13. The problem of illegal parking of bicycles at the PTI persisted for years, primarily because TD refused to take up its management responsibility of the PTI.

14. As TD had signed the Certificate and taken over the PTI as the "User Department", it should be responsible for managing the PTI and monitoring its operation in accordance with section 344 of the Accommodation Regulations. The Maintenance Schedule merely set out the maintenance and repair duties of various departments, which did not cover management responsibility.

15. Nonetheless, TD kept denying its management responsibility of the PTI and was reluctant to take a leading role in exploring measures to cope with the problem, which dragged on as a result.

16. We can understand that removal of illegally parked bicycles was not a normal duty for TD and that the Department had no legal authority to deal with the problem. However, as the "User Department" of the PTI, TD should discharge its management responsibility. If necessary, it could seek assistance from departments having the resources and legal authority, instead of using excuses to evade its responsibility for tackling the problem.

Conclusion

17. In light of the above, The Ombudsman considered the complaint against TD **substantiated**.

Recommendations

18. GPA records show that there are currently 44 Government-held PTIs within private developments in Hong Kong, while TD claimed to have taken over only 20 of them. Anyhow, the management problem is wide-ranging.

19. The Ombudsman made a number of recommendations to TD, including:

(a) to confirm with GPA the number and locations of PTIs;

(b) to take up and discharge its overall management responsibility for the PTIs;

(c) to formulate a code of practice and clear guidelines with regard to such PTIs;

(d) to inspect the PTIs periodically for early rectification of irregularities;

(e) to plan bicycles clearance operations with other departments in advance;

(f) to seek legal authorisation from the Secretary for Justice for enforcing the Summary Offences Ordinance and removing bicycles abandoned at PTIs; and

(g) to explore other methods of tackling the problem of illegal parking of bicycles.

Office of The Ombudsman
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